

WC 05-237

SWIDLER BERLIN LLP

Please Date Stamp & Return

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JUL 14 2005

VIA COURIER

July 14, 2005

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Wireline Competition Bureau
P.O. Box 358145
Pittsburgh, PA 15251-5145

Re: In the Matter of Cleartel Communication, Inc. and nii communications, inc.'s
Request for Grant of Authority Pursuant to Section 214 of the Communications
Act of 1934, as Amended, and Sections 63.04 and 63.24 of the Commission's
Rules to Complete a Transfer of Control of nii communications, ltd., an
Authorized International and Domestic Interstate Carrier

Dear Ms. Dortch:

On behalf of Cleartel Communication, Inc. ("Cleartel") and nii communications, inc. ("Parent") (Cleartel and Parent together, "Applicants"), enclosed for filing is an application for Commission approval to transfer control of nii communications, ltd., and authorized international and domestic interstate carrier to Cleartel. Pursuant to Section 63.04(b) of the Commission's rules, Applicants submit this filing as a combined domestic section 214 transfer application and international section 214 transfer application ("Combined Application"). Applicants are simultaneously filing the Combined Application electronically via the International Bureau's Electronic Filing System ("MyIBFS").

Applicants also submit a completed Fee Remittance Form 159 and check in the amount of \$895.00, to the Federal Communications Commission, which satisfies the filing fee required for this Application under line 2.b of Section 1.1105 of the Commission's rules. A copy of the Fee Remittance Form 159 is being submitted to the Mellon Bank in Pittsburgh, Pennsylvania along with the Application.

Please do not hesitate to contact us if you have any questions regarding this filing.

Respectfully submitted



Catherine Wang
Brian McDermott

Counsel to Applicants

Enclosure

READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE

Approved by OMB
3060-0589
Page 1 of 1

(1) LOCKBOX # 358145		SPECIAL USE ONLY	
		FCC USE ONLY	
SECTION A - PAYER INFORMATION			
(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) Swidler Berlin LLP		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) 895.00	
(4) STREET ADDRESS LINE NO. 1 3000 K Street, N.W.			
(5) STREET ADDRESS LINE NO. 2 Suite 300			
(6) CITY Washington		(7) STATE DC	(8) ZIP CODE 20007
(9) DAYTIME TELEPHONE NUMBER (include area code) 202-424-7500		(10) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(11) PAYER (FRN) 0004-3539-00		(12) FCC USE ONLY	
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(13) APPLICANT NAME nii communications, inc.			
(14) STREET ADDRESS LINE NO. 1 1717 North Loop 1604, East			
(15) STREET ADDRESS LINE NO. 2 Suite 300			
(16) CITY San Antonio		(17) STATE TX	(18) ZIP CODE 78232
(19) DAYTIME TELEPHONE NUMBER (include area code) 210-403-9100		(20) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(21) APPLICANT (FRN) 0013-7454-43		(22) FCC USE ONLY	
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE CUT	(25A) QUANTITY 895.00	
(26A) FEE DUE FOR (PTC) 895.00	(27A) TOTAL FEE 895.00	FCC USE ONLY	
(28A) FCC CODE 1		(29A) FCC CODE 2	
(23b) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY	
(28B) FCC CODE 1		(29B) FCC CODE 2	
SECTION D - CERTIFICATION			
CERTIFICATION STATEMENT I, <u>M. Renee Britt</u> , certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief. SIGNATURE <u>M. Renee Britt</u> DATE <u>07/14/2005</u>			
SECTION E - CREDIT CARD PAYMENT INFORMATION			
MASTERCARD _____ VISA _____ AMEX _____ DISCOVER _____			
ACCOUNT NUMBER _____		EXPIRATION DATE _____	
I hereby authorize the FCC to charge my credit card for the service(s) authorization herein described.			
SIGNATURE _____		DATE _____	

SEE PUBLIC BURDEN ON REVERSE

FCC FORM 159

FEBRUARY 2003 (REVISED)

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of the Joint Application of)

Cleartel Communications, Inc.)

and)

nii communications, inc.)

Request For Grant of Authority)
Pursuant to Section 214 of the Communications Act)
of 1934, as amended, and Sections 63.04 and 63.24)
of the Commission's Rules to Complete a)
Transfer of Control of nii communications, ltd.,)
an Authorized International and)
Domestic Interstate Carrier)

File No. ITC-T/C-2005 _____

WC Docket No. 05-_____

JOINT APPLICATION

I. INTRODUCTION

A. Summary of Transaction

Cleartel Communications, Inc. ("Cleartel") and nii communications, inc. ("Parent") (together, "Applicants"), pursuant to Section 214 of the Communications Act, as amended, 47 U.S.C.A. § 214, and Sections 63.04 and 63.24 of the Commission's rules, 47 C.F.R. §§ 63.04 & 63.24, notify the Commission and respectfully request authority to complete a series of transactions which will result in a transfer of control of nii communications, ltd. ("nii"), an authorized international and domestic interstate carrier. The transactions will involve the purchase by Cleartel of all the equity interest of nii from Parent.

B. Application Eligible for Streamlined Processing

Applicants respectfully submit that this Application is eligible for streamlined processing pursuant to Sections 63.03 and 63.12 of the Commission's Rules, 47 C.F.R. §§ 63.03 & 63.12. With respect to domestic authority, this Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) because (1) the proposed transaction would result in Cleartel and its affiliates (as defined in Section 3(1) of the Communications Act – "Affiliates"), including nii, collectively holding less than a ten percent (10%) share of the interstate, interexchange market; (2) Cleartel and its Affiliates will provide competitive local exchange or exchange access services only in areas served by dominant local exchange carriers (none of which are parties to the proposed transactions) and; (3) none of the Applicants or their Affiliates are dominant with respect to any service. With respect to international authority, this Application is eligible for streamlined processing pursuant to Section 63.12(a)-(b) of the Commission's Rules, 47 C.F.R. §63.12(a)-(b). In particular, Section 63.12(c)(1) is inapplicable because none of the Applicants are foreign carriers, or are affiliated with any foreign carriers and none of the scenarios outlined in Section 63.12(c) of the Commission's Rules, 47 C.F.R. § 63.12(c), apply.

In support of this Application, Applicants provide the following information:

II. THE PARTIES

A. nii communications, inc. ("Parent")

Parent is a corporation organized under the laws of the state of Delaware. Parent's address is: 1717 North Loop 1604, East, Suite 300, San Antonio, TX 78232. nii communications, ltd. ("nii"), a Texas limited partnership, is owned by Parent and nii communications gp, llc, a Texas limited liability company ("General Partner"). Prior to the closing of the Transaction, Parent holds a 99% limited partnership interest in nii, while General

Partner holds a 1% general partnership interest in nii. General Partner is a wholly owned subsidiary of Parent. nii has a principal place of business located at 1717 North Loop 1604, East, Suite 300, San Antonio, TX 78232. nii holds authority to provide global facilities-based and resold services pursuant to authority granted by the Commission in File No. ITC-214-20000217-00085. nii is a provider of local exchange, domestic and international long distance, and enhanced voice, data and internet services which operates in five (5) states. After the consummation of the transaction, nii will retain its authorization and will continue to provide services to its customers. Additional information on Parent and nii is available on the companies' website at: <http://www.niicomunications.com> and is incorporated herein by reference.

B. Cleartel Communications, Inc. ("Cleartel")

Cleartel is a Delaware corporation with principal offices located at 2855 S. Congress Ave., Delray Beach, FL 33455. Established in 1998, Cleartel Communications is a leading provider of voice and data solutions serving customers in the Northeast, Southeast, Southwest, and Midwestern United States. Cleartel, through its wholly-owned subsidiaries, Cleartel Telecommunications, Inc., Cleartel Telecommunications of Virginia, Inc., NOW Communications, Inc., Telecon Communications Corp., and IDS Telcom Corp., offers local, Internet and long distance services to both residential and business users in 30 states. Additional information on Cleartel is available on the company's website at: <http://www.cleartel.com> and is incorporated herein by reference.

Cleartel is a portfolio investment company of MCG Capital Corporation ("MCG"), a publicly traded investment company organized under the laws of the State of Delaware. In addition to its interest in Cleartel, MCG also holds or has held interests in other competitive

telecommunications companies, including BridgeCom International, Inc., TruCom Corporation, Broadview Networks, Inc., and Broadview NP Acquisition Corp. Additional information regarding the telecommunications operations of Cleartel and its affiliates is provided in Section VI (a)(7).

III. DESCRIPTION OF THE TRANSACTION

In order to complete the proposed transaction, Applicants have entered into a Purchase Agreement dated as of June 1, 2005 ("Purchase Agreement") under which Parent has agreed to sell all of the assets of nii.¹ Under the terms of the Purchase Agreement, a newly created acquisition subsidiary of MCG (the ultimate majority owner of Cleartel), IH NII Acquisition, Inc. ("Acquisition"), will acquire all of the membership and partnership interests of nii and General Partner from Parent. Immediately thereafter, Acquisition will become a wholly owned subsidiary of Cleartel. Subsequently, Acquisition will be liquidated and its assets including the membership and partnership interests of General Partner and nii will be transferred to Cleartel. As a result, upon completion of the transaction, General Partner will be a wholly owned direct subsidiary of Cleartel and General Partner and Cleartel will collectively wholly own nii. Accordingly, Applicants seek approval for the transfer of control of nii from Parent to Cleartel. Attached as Exhibit A is an illustrative chart describing the proposed transaction.

Applicants emphasize that the proposed transaction is limited to a change in equity ownership of nii and will not result in the transfer or discontinuance of any customers. Immediately following the consummation of the transaction, nii' s customers will continue to receive service under the same rates, terms and conditions of service as is currently being provided by nii. nii' s rates will continue to be governed by its tariffs and contracts and any

future change in rates will be subject to any requirements outlined in its tariffs and contracts. nii will continue to operate and provide services to customers. In addition, the proposed transaction will not result in a change in the name under which nii provides service. As a result, the transaction will be transparent to nii' s customers in terms of the services they receive.

IV. PUBLIC INTEREST STATEMENT

Applicants respectfully submit that the proposed transaction serves the public interest. In particular, Applicants submit that (1) the transaction will increase competition in the telecommunications market by reinforcing the status of nii as a viable competitor and (2) the transaction will minimize the disruption of service and be transparent to nii' s customers.

The proposed transaction is expected to facilitate competition by improving the operational position of nii and allowing nii to expand its service offerings in the future. Approving the transaction will serve the public interest by promoting competition among providers of telecommunications services to the public. By creating a more effective and multifaceted telecommunications carrier, the proposed transaction will significantly enhance competitive choices for U.S. telecommunications customers. Therefore, the public interest is served by approving the transaction.

Moreover, given that the transaction will not directly affect nii's rates, terms and conditions of services, the transaction will have no negative effects on customers. Indeed, immediately following the proposed Transactions, the customers of nii will continue to receive service under the same rates, terms and conditions of service as those customers currently receive. The proposed Transactions therefore will be entirely transparent to customers of the nii in terms of the services they receive. In sum, the proposed Transactions

¹ A copy of the Purchase Agreement will be provided upon request.

are expected to enhance the ability of nii to provide high-quality telecommunications services which should invigorate competition and thereby benefit consumers of interstate and international telecommunications services.

V. INFORMATION REQUIRED BY SECTION 63.24(e)

Pursuant to Section 63.24(e)(2) of the Commission's rules, the Applicants submit the following information requested in paragraphs (a) through (d) of Section 63.18, for nii and Cleartel, and also submit the information requested in paragraphs (h) through (p) of Section 63.18 for Cleartel:

63.18 (a) Name, address and telephone number of each Applicant:

Transferor:

nii communications, inc.
1717 North Loop 1604, East
Suite 300
San Antonio, TX 78232
(210) 403-9100

Transferee:

Cleartel Communications, Inc.
2855 S. Congress Ave.
Delray Beach, FL 33455
(888) 389-1400
FRN: 0006949051

Licensee:

nii communications, ltd.
1717 North Loop 1604, East
Suite 300
San Antonio, TX 78232
(210) 403-9100
FRN: 0004340477

63.18 (b) Jurisdiction of Organizations:

Transferor:

Parent is a corporation organized and existing under the laws of the State of Delaware.

Transferee:

Cleartel is a corporation organized and existing under the laws of the State of Delaware.

Licensee:

nii is a limited partnership organized and existing under the laws of the State of Texas.

63.18 (c) Correspondence concerning this Application should be sent to:

Catherine Wang
Brian McDermott
Swidler Berlin LLP
3000 K Street NW
Suite 300
Washington, DC 20007
(202) 424-7500 (Tel)
(202) 424-7645 (Fax)
CWang@swidlaw.com (E-Mail)
BMMcDermott@swidlaw.com (E-Mail)

With copies to:

Scott Kellogg
Cleartel Communications, Inc.
205 West Wacker Drive, Suite 2333
Chicago, IL 60606
(312) 658-1056 (Tel)
(312) 658-5487 (Fax)
skellogg@cleartel.com (Email)

- 63.18 (d)** Parent does not directly hold authority Section 214 of the Act. nii holds authority to provide global facilities-based and resold services pursuant to authority granted by the Commission in File No. ITC-214-20000217-00085. nii also holds blanket domestic Section 214 authority.

Cleartel Communications, Inc. holds international Section 214 authority granted in File No. ITC-ASG-20031126-00555P. Cleartel is also the direct corporate parent of Cleartel Telecommunications, Inc. (File No. ITC-ASG-20021011-00541P) and Telecon Communications Corp. (File No. ITC-214-20000127-00042). These carriers also hold blanket domestic Section 214 authority. Cleartel is also the direct corporate parent of IDS Telcom Corp. which is in the

process of acquiring the assets of IDS Telcom, LLC and holds Section 214 authority as a result of that transaction (*see* WC Docket No. 50-70 and File No. ITC-ASG-20050214-00049). Cleartel is also affiliated with the following carriers to the extent that it shares common indirect ownership: BridgeCom International, Inc. (File No. ITC-214-19971020-00645); TruCom Corporation (File No. ITC-214-19971104-00683); Broadview Networks, Inc. (ITC-214-20000128-00044); and Broadview NP Acquisition Corp. (ITC-214-20041118-00456).

63.18 (h) Following the completion of the proposed transactions, the following entities will directly or indirectly own 10% or more of **nii Communications, Ltd.**:

Name: Cleartel Communications, Inc.
Address: 2855 S. Congress Ave.
Delray Beach, FL 33455
Citizenship: U.S.
Principal Business: Telecommunications
% Equity/Voting: 100%²

The following entity directly owns 10% or more of the equity of **Cleartel Communications, Inc.**:

Name: MCG Capital Corporation
Address: 1100 Wilson Boulevard
Suite 3000
Arlington, Virginia 22209
Citizenship: U.S.
Principal Business: Holding Company
% Equity/Voting: 100%

The following entity directly owns ten percent (10%) or more of the equity of **MCG Capital Corporation**:

Name: Eubel Brady & Suttman Asset Management, Inc.
Address: 7777 Washington Village Drive,
Suite 210, Dayton OH 45459
Citizenship: U.S.
Principal Business: Investment Company
% Equity/Voting: 10%³

Upon information and belief, no entity owns more than half of the equity or voting interests of **Eubel Brady & Suttman Asset Management, Inc.** Therefore, no other entity has an indirect equity or voting interest in **nii communications, Ltd.** of 10% or greater.

² Cleartel will hold a 99% interest in **nii** directly and a 1% interest through its wholly owned subsidiary, General Partner.

³ The ownership information is based upon filings made with the Securities and Exchange Commission.

To the best of Applicants' knowledge, there are no officers or directors of nii that also serve as an officer or director of a foreign carrier as defined in Section 63.09(d).

- 63.18 (i)** Applicants certify that they are not a foreign carriers, nor are they affiliated with a foreign carrier, nor will Applicants be affiliated with a foreign carrier as a result of this transaction.
- 63.18 (j)** Applicants certify that they do not seek to provide international telecommunications services to any destination country where:
- (1) An Applicant is a foreign carrier in that country; or
 - (2) An Applicant controls a foreign carrier in that country; or
 - (3) Any entity that owns more than 25 percent of an Applicant, controls a foreign carrier in that country; or
 - (4) Two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate more than 25 percent of the Applicants and are parties to, or the beneficiaries of, a contractual relation affecting the provision or marketing of international basic telecommunications services in the United States.
- 63.18 (k)** Not applicable.
- 63.18 (l)** Not applicable.
- 63.18 (m)** Not applicable.
- 63.18 (n)** Applicants certify that they have not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.
- 63.18 (o)** Applicants certify that they are not subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1998. *See* 21 U.S.C. § 853a. *See also* 47 C.F.R. §§ 1.2001-1.2003.
- 63.18 (p)** Applicants respectfully submit that this Application is eligible for streamlined processing pursuant to Section 63.12(a)-(b) of the Commission's Rules, 47 C.F.R. §63.12(a)-(b). In particular, Section 63.12(c)(1) is inapplicable because none of the Applicants are or are affiliated with any foreign carriers and none of the scenarios outlined in Section 63.12(c) of the Commission's Rules, 47 C.F.R. § 63.12(c), apply.

VI. INFORMATION REQUIRED BY SECTION 63.04

In lieu of an attachment, pursuant to Commission rule 63.04(b), 47 C.F.R. § 63.04(b)

Applicants submit the following information in support of their request for domestic Section

214 authority in order to address the requirements set forth in Commission Rule 63.04(a)(6)-(12):

- (a)(6) A description of the proposed transactions is set forth in **Section III** above.
- (a)(7) nii currently provides interstate and intrastate telecommunications services in Arkansas, California, Illinois, Oklahoma, and Texas. No nii affiliate offers domestic telecommunications services.

Affiliates of Cleartel provide domestic telecommunications services as follows:

Cleartel, through its operating subsidiaries,⁴ provides competitive interexchange and local exchange services in Alabama, Arkansas, California, Connecticut, District of Columbia, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, North Carolina, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

BridgeCom International, Inc. and TruCom Corporation provide resold and facilities-based competitive interexchange and local exchange services primarily in the New York/New Jersey area. BridgeCom also provides interexchange services in Arkansas, California, Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Ohio, Pennsylvania, Rhode Island, Texas and Washington.

Broadview Networks, Inc. provides resold and/or facilities-based competitive interexchange and local exchange services in California, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Illinois, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Texas, Vermont, Virginia and West Virginia. Broadview Networks also has two wholly owned subsidiaries (Broadview Networks, Inc. of Mass. and Broadview Networks, Inc. of VA) who provide service in Massachusetts and Virginia only. Broadview NP Acquisition Corp. holds authority to provide interexchange service and, in some instances, competitive local exchange service in the following 23 states: New York, Massachusetts, New Jersey, Virginia, Michigan, Delaware, Rhode Island, Pennsylvania, New Hampshire, Texas, California, Illinois, Maine, Maryland, Ohio, Vermont, West Virginia, Connecticut, Indiana, Montana, Nevada, Oklahoma and Colorado.

⁴ The Cleartel subsidiaries are Cleartel Telecommunications, Inc., Cleartel Telecommunications of Virginia, Inc., Now Communications, Inc., Telecon Communications Corp., and IDS Telcom Corp.

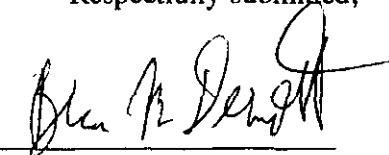
- (a)(8) Applicants respectfully submit that this Application is eligible for streamlined processing pursuant to Sections 63.03 of the Commission's Rules, 47 C.F.R. §63.03. In particular, with respect to domestic authority, this Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) because: (1) the proposed transaction would result in Applicants and their affiliates (as defined in Section 3(1) of the Communications Act – "Affiliates") collectively holding less than a ten percent (10%) share of the interstate, interexchange market; (2) Applicants and their Affiliates will provide competitive local exchange service and exchange access services only in areas served by dominant local exchange carriers (none of which are parties to the proposed transactions) and; (3) none of the Applicants or their Affiliates are dominant with respect to any service.
- (a)(9) Through this Application, Applicants seek authority with respect to both international and domestic Section 214 authorizations (this Application is being separately and concurrently filed with respect to both types of authorities in compliance with Commission Rule 63.04(b), 47 C.F.R. § 63.04(b)). No other applications are being filed with the Commission with respect to this transaction.
- (a)(10) Prompt completion of the proposed transactions is critical to ensuring that Applicants can obtain the benefits described in the foregoing application. Accordingly, Applicants respectfully request that the Commission approve this Application expeditiously in order to allow Applicants to consummate the proposed transactions as soon as possible.
- (a)(11) Not applicable.
- (a)(12) A statement showing how grant of the application will serve the public interest, convenience and necessity is provided in **Section IV** above.

VII. CONCLUSION

For the reasons stated above, Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by a grant of this Application. Indeed, failure to grant it would directly harm the public interest. In light of the exigent circumstances and, in particular the need to ensure continuity of service to existing customers, Applicants respectfully request expedited treatment to permit Applicants to consummate the proposed transaction described above as soon as possible.

Respectfully submitted,

By: _____



Catherine Wang
Brian McDermott
Swidler Berlin LLP
3000 K Street, NW, Suite 300
Washington, DC 20007-5116
(202) 424-7500 (Tel)
(202) 424-7645 (Fax)

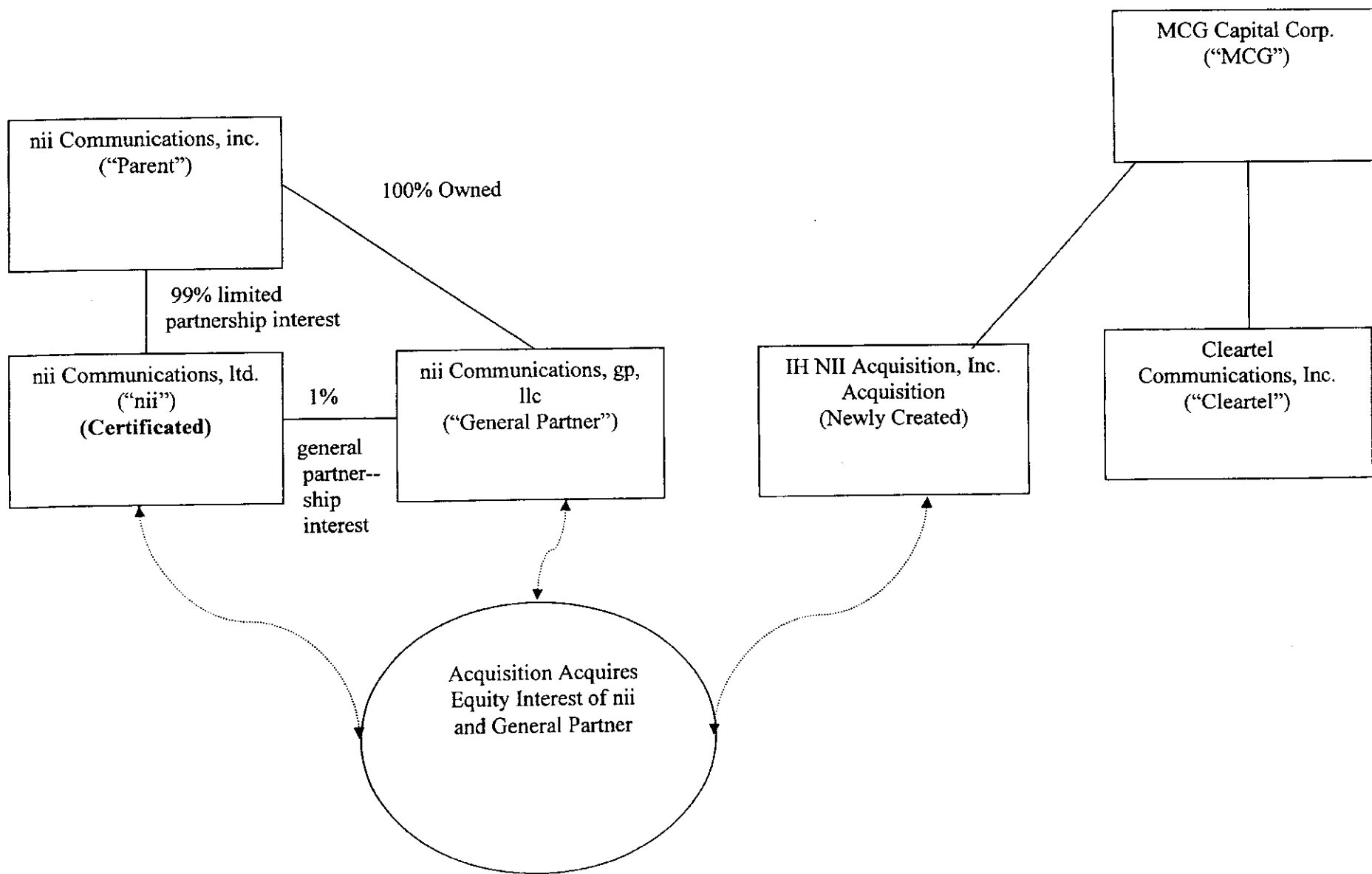
June 14, 2005

COUNSEL FOR APPLICANTS

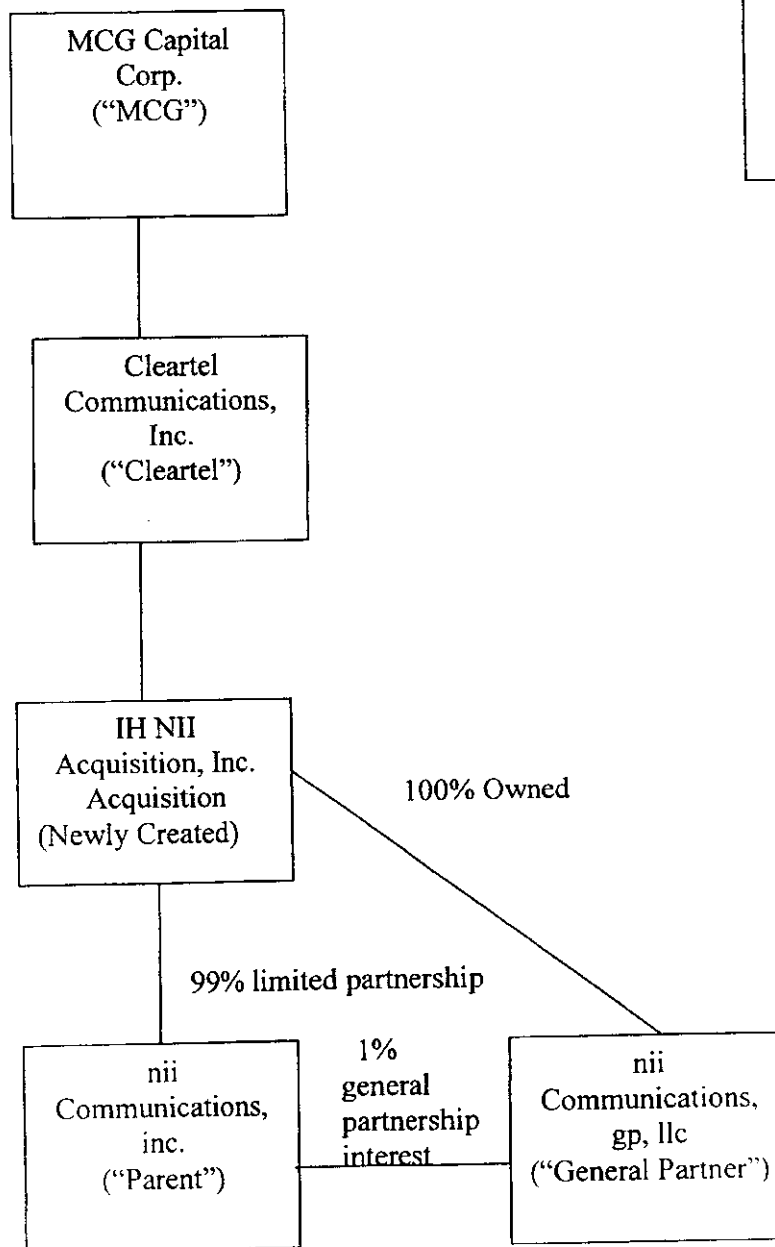
Exhibit A

Illustrative Chart

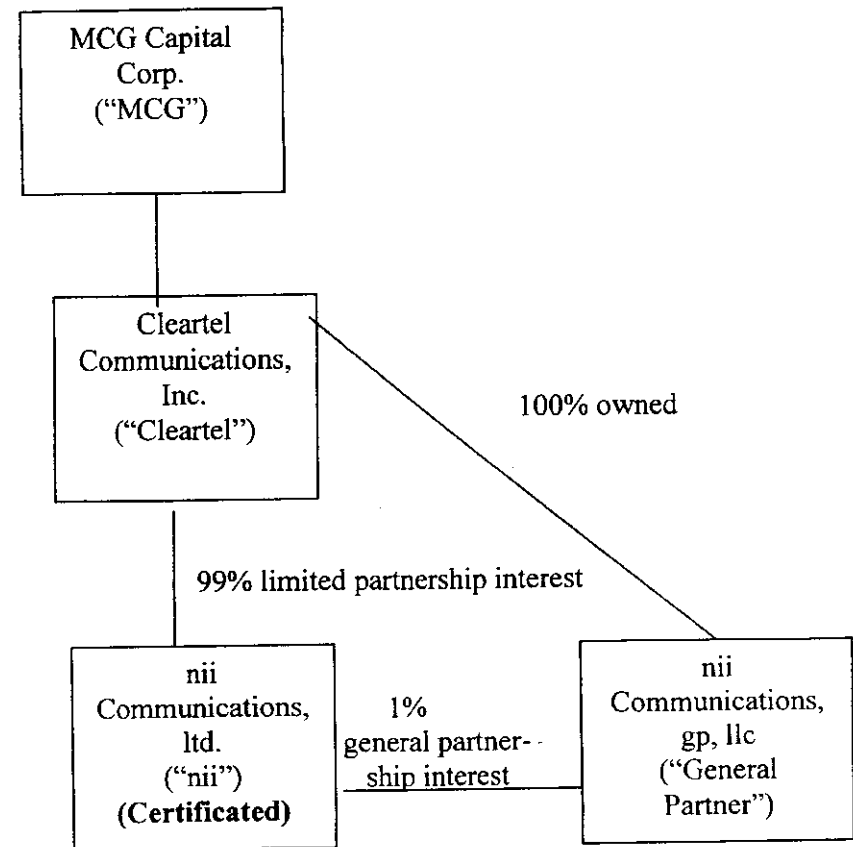
PRE-TRANSACTION



INTERVENING STEP



POST-TRANSACTION



CERTIFICATION OF APPLICANT

On behalf of Cleartel Communications, Inc., I hereby certify upon penalty of perjury that I am the Chief Executive Officer of Cleartel Communications, Inc. and that the statements in the foregoing Federal Communications Commission Section 214 Application are true, complete, and correct to the best of my knowledge and are made in good faith.

By: 

Name: Ken Baritz

Title: Chief Executive Officer

Date: 7-5-05

CERTIFICATION OF APPLICANT

On behalf of nii communications, Ltd., I hereby certify upon penalty of perjury that I am Vice President of Market Development of nii communications, Ltd. and that the statements in the foregoing Federal Communications Commission Section 214 Application are true, complete, and correct to the best of my knowledge and are made in good faith.

By:



Name:

Kenneth F. Melley, Jr.

Title:

Vice President of Market Development

Date:

07/05/2005